

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Civil Action No.: 004-105150JLT

<hr/> PAN AMERICAN AIRWAYS CORP.,)	
Plaintiff/Counterclaim Defendant,)	
vs.)	
)	
ROBERT E. BARNES,)	
<u>Defendant/Counterclaim Plaintiff.</u>)	

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE
FOR A PRETRIAL RULING AS TO THE STANDARD TO BE APPLIED TO
DEFENDANT'S COUNTERCLAIM FOR DEFAMATION**

NOW COMES the Plaintiff in opposition to defendant's above reference motion in limine. In support of this Opposition, Plaintiff states as follows:

1. Service of the complaint in the manner and fashion alleged by the defendant does not satisfy the requirements of defamation. The plaintiff reasonably believed that the statements set forth in the complaint as they relate to the defendant were true. The statements relating to the defendant as set forth in the complaint pertained to when the defendant was employed by Pan Am.
2. Inasmuch as the statements were contained in a complaint, any reasonable person reading the complaint would have known that the assertions contained therein were allegations and therefore did not hold the defendant up to scorn, hatred, ridicule, or contempt in the minds of any considerable or respectable segment of the community.
3. There is no evidence that the plaintiff suffered actual injury or harm as a result of the complaint being served in the manner and location alleged in the defendant's counterclaim.
4. There is no evidence that the allegations contained in the complaint were made with knowledge that they were false or made with reckless disregard.
5. A claim for defamation cannot arise out of the subject matter of a complaint on the grounds of privilege.
6. For the foregoing reasons, plaintiff respectfully submits that the defendant is not entitled to recover money damages, costs or expenses or special damages on his counterclaim.

WHEREFORE, the plaintiff respectfully requests that this Honorable Court deny defendant's Motion in Limine.

The Plaintiff/Counterclaim Defendant,
By its attorney,

/s/ John J. O'Brien, Jr.

John J. O'Brien, Jr.

BBO# 375885

O'Brien & von Rosenvinge, P. C.

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Wellesley, MA 02481

(781) 239-9988

DATED: September 14, 2006

CERTIFICATE OF SERVICE

I, John J. O'Brien, Jr., attorney for the plaintiff/counterclaim defendant hereby certify that on this date a true copy was forwarded by electronic message to the following counsel of record:

Peter Piel, Esq.
800 Turnpike Street
Suite 300
North Andover, MA 01845

DATED: September 14, 2006

/s/ John J. O'Brien, Jr.

John J. O'Brien, Jr.